

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-00962-BNB

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

SCOTT PATRICK HEDDINGS,

JUN 22 2010

Applicant,

GREGORY C. LANGHAM
CLERK

v.

RENE GARCIA, Warden, FCI Englewood, and
THE ATTORNEY GENERAL OF THE STATE OF MISSOURI,

Respondents.

ORDER OF TRANSFER

Applicant, Scott Patrick Heddings, is a prisoner in the custody of the United States Bureau of Prisons who currently is incarcerated at the Federal Correctional Institution in Littleton, Colorado. He submitted to and filed with the Court *pro se* an application pursuant to 28 U.S.C. § 2254 for writ of habeas corpus. He paid the \$5.00 filing fee for a habeas corpus action.

The Court must construe the habeas corpus application liberally because Mr. Heddings is representing himself. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). However, the Court should not be the *pro se* litigant's advocate. *Hall*, 935 F.2d at 1110. For the reasons stated below, the application will be transferred to the United States District Court for the Western District of Missouri.

Mr. Heddings alleges that he was convicted in the United States District Court for the District of Montana (District of Montana), Great Falls Division, on charges of receipt

of child pornography pursuant to 18 U.S.C. § 2254A(a)(2) and destruction or removal of property to prevent seizure pursuant to 18 U.S.C. § 2232(a). ***See United States v. Heddings***, Criminal Action No. 06-cr-00076-SEH (D. Mont. May 1, 2007). On September 6, 2007, he was sentenced to 240 months of imprisonment and to a life term for supervised release. An amended judgment was entered on the docket on January 21, 2009. On February 10, 2010, Mr. Heddings' unopposed motion to dismiss his appeal was granted, and the appeal was dismissed. ***See United States v. Heddings***, No. 09-30058 (9th Cir. Feb. 10, 2010).

Mr. Heddings also appears to have been convicted in Circuit Court of Clay County, Missouri, Case No. 06CY-CR03184, on two counts of statutory sodomy in the first degree and one count of child molestation, and sentenced to seven years of imprisonment. Judgment was entered on October 10, 2008. The charges in the Missouri state case appear to have been considered an aggregating factor causing the District of Montana to impose the maximum sentence in the federal case. Mr. Heddings alleges that he did not appeal from the judgment of conviction.

In the instant § 2254 action, Mr. Heddings is challenging his state conviction in Clay County Circuit Court Case No. 06CY-CR03184, not his federal conviction in District of Montana Criminal Action No. 06-cr-00076-SEH. He asserts two claims alleging violation of the prohibition against double jeopardy.

Venue in this Court is not proper. Section 1391(b), 28 U.S.C., the statute that provides for venue, states:

A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by

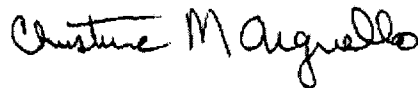
law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.

Mr. Heddings is challenging his state convictions in the Clay County Circuit Court case. The events giving rise to his claims occurred in Missouri. Therefore, venue is improper in this Court. The proper venue for a challenge to Mr. Heddings' convictions lies in the district in which he originally was convicted. In the interest of justice, a federal court may transfer a case filed in the wrong district to the correct district. **See** 28 U.S.C. § 1406(a). Accordingly, it is

ORDERED that the habeas corpus application and the action is transferred to the United States District Court for the Western District of Missouri.

DATED at Denver, Colorado, this 21st day of June, 2010.

BY THE COURT:



CHRISTINE M. ARGUELLO, for
ZITA LEESON WEINSHIENK
Senior Judge, United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 10-cv-00962-BNB

Scott Patrick Heddings
Reg No. 09156-046
FCI - Englewood
9595 W. Quincy Ave.
Littleton, CO 80123

United States District Court - **CERTIFIED**
for the Western District of Missouri
131 West High Street, Room 310
Jefferson City, MO 65101-1557

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 6/22/10

GREGORY C. LANGHAM, CLERK

By 

Deputy Clerk